Ukraine's Ban on Russian Social Media: On The Edge Between National Security and Freedom of Expression

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Ukrainian President Viktor Poroshenko recently issued a Presidential Decree imposing a ban on popular Russian social media sites *VKontakte* and *Odnoklassniki*, search engine *Yandex* and email service *Mail.Ru*. In addition, various Russian TV channels were banned from broadcasting in Ukraine. These restrictive measures are part of Ukraine's action against hybrid warfare and inspired by a desire to protect the country's national security against Russian cyberattacks and propaganda. In the words of Dmytro Shymkiv, the deputy head of Ukraine's presidential administration, the decision is designed 'to restore the cyber sovereignty of Ukraine' protecting the country against sophisticated forms of Russian aggression. Of course, the question arises to what extent such measures are legitimate in light of fundamental rights and values. Human Rights Watch, for instance, labelled the President's initiative as 'a cynical, politically expedient attack on the right to information affecting millions of Ukrainians, and their personal and professional lives'.

Reaction of the international community

The divergent views regarding the nexus between security and fundamental rights can be derived from the reaction of major international organisations. On the one hand, NATO Secretary General Jens Stoltenberg stressed that 'the blocking of Russian social networks in Ukraine is an issue of national security, not freedom of speech'. On the other hand, Thorbjorn Jagland, Secretary General of the Council of Europe, unequivocally stated that 'blocking of social networks, search engines, mail services and news websites goes against our common understanding of freedom of expression and freedom of the media.' The EU, for its part, did not react with high level public statements. Nevertheless, the EU delegation in Kyiv also expressed its concern. Whilst recognising that the protection of national security is the prerogative of the Ukrainian authorities, the EU representative expected further explanations regarding the implications for the freedom of expression.

In search of legal guidelines

Whereas the borderline between defending a country's national security and limits to fundamental freedoms may cause fierce political discussions, crucial legal guidelines can be derived from relevant international treaties and jurisprudence. A key point of reference is Article 10 (2) of the European Convention on Human Rights (ECHR) which establishes that the exercise of the right to freedom of expression may be subject to limitations in the interests of national security, territorial integrity or public safety. In *Ahmet Yildrin v. Turkey*, the European Court of Human Rights (ECtHR) interpreted this provision and defined the minimum criteria for ECHR-compatible legislation on blocking online sources. This implies, amongst others, that the blocking order should clearly define the scope and duration of the limitation to the freedom of expression. Moreover, the blocking order should be in compliance with the principles of proportionality and necessity. Against this background, the ECtHR concluded that the general blocking of access to (parts of) the internet for (segments of) the public cannot be justified on grounds of national security. Only if there is 'a plausible instrumental relationship between the interference and the social needs pursued', a blocking order can be accepted. In relation to the Ukrainian case, this implies that the existence of a rational connection between the ban on Russian social media sites and the threat of cyberattacks is a paramount requirement to withstand the criticisms against the

controversial Presidential Decree. The claim that the banned sites have been routinely monitored and used by Russia's Federal Security Service points in this direction but it is far from certain whether such argumentation would stand the test of proportionality in court proceedings.

Finally, it is noteworthy that Ukraine triggered Article 15 of the ECHR, which allows certain derogations from the Convention's obligations in times of emergency. However, the emergency exception relates to the situation in the eastern part of Ukraine and it is does not seem that the blocking of social media sites in the entire country is covered under this provision.

In any event, the tension between national security and fundamental freedoms in the peculiar context of Ukraine's political situation cannot be simply ignored. Proceeding from the explicit commitment to human rights and fundamental freedoms in the EU-Ukraine Association Agreement, an open and frank discussion regarding the reconciliation of security and fundamental rights is the least to expect.

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